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5

6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

No.

vs.

10 PUBLIC UTILITY DISTRICT NO. 1 OF  
KLICKITAT COUNTY, a Washington  
11 public utility district,

12 Defendant.

COMPLAINT

13 Plaintiff, United States of America, on behalf of the United States Department  
14 of the Interior and the United States Department of Agriculture, by and through  
15 William D. Hyslop, United States Attorney, for the Eastern District of Washington,  
16 and Joseph P. Derrig, Assistant United States Attorney for the Eastern District of  
17 Washington, alleges as follows:

18 **INTRODUCTION**

20 1. This is a civil action under federal and Washington State law for damages  
incurred by the United States in connection with the “Mile Marker 28 Fire,” which  
21 Defendant’s power line ignited on or about July 24, 2013, in Klickitat County.

23 2. The United States, acting on its own behalf and as trustee on behalf of the  
Yakama Nation, and at the request of the Bureau of Indian Affairs (“BIA”) of the U.S.  
24 Department of the Interior, brings this action against Defendant for damages and  
suppression costs caused by the burning of approximately 19,732 acres within the  
25 exterior boundary of the Yakama Nation’s reservation.

3. The United States, at the request of the U.S. Department of Agriculture, also brings this action against Defendant for damages and suppression costs stemming from the Mile Marker 28 Fire.

## JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

5. Venue is proper in the Eastern District of Washington pursuant to 28 U.S.C. § 1391(b), in that, the Defendant is a Washington State municipal corporation with its principle place of business in Washington State and all conduct relevant to the causes of action herein occurred within the Eastern District of Washington.

6. This action is timely pursuant to 28 U.S.C. § 2415(b).

7. The procedural hurdles contained in Wash. Rev. Code 4.96.020 do not apply to the federal government. *See West Virginia v. United States*, 479 U.S. 305, 311 (1987). Nonetheless, Plaintiff has filed a notice of claim with KPUD, as may be required under RCW 4.96.020, and waited more than 60 days before filing this Complaint.

## PARTIES

8. Plaintiff, United States of America, holds land in trust within the Yakama Indian Reservation for the benefit of the Yakama Nation which are under the supervision, control, administration, and protection of the Department of the Interior, Bureau of Indian Affairs (BIA). Plaintiff, United States of America, through the Department of the Interior and Department of Agriculture incurred damages and suppression costs stemming from the Mile Marker 28 Fire.

9. Defendant, Public Utility District No. 1 of Klickitat County (“KPUD”), is a public utility district formed under the laws of the State of Washington and doing business in Klickitat County, Washington. KPUD owned, operated, and maintained the overhead electrical distribution lines that are the subject of this action. KPUD is responsible for ensuring it has the legal authority to have its distribution lines on the Yakama Reservation. KPUD is also responsible for controlling, operating, and

1 maintaining the transmission lines described above, including but not limited to  
2 keeping vegetation cleared to a safe distance from the transmission lines.

3 **GENERAL ALLEGATIONS**

4 10. On July 24, 2013, at approximately 11:00 am, the Mile Marker 28 Fire  
5 started on property on the Yakama Indian Reservation, northeast of Goldendale, in  
6 Klickitat County, Washington, in the vicinity of mile marker 28 on State Route 97  
7 (hereinafter “Mile Maker 28 Fire” or “MM 28 Fire”).

8 11. Contact between a KPUD electrical distribution line and the branches of  
9 a Grand Fir near Satus Pass in Klickitat County caused the Mile Marker 28 Fire to  
10 ignite and burn approximately 26,000 acres, of which 19,732 acres were within the  
11 exterior boundary of the Yakama Indian Reservation. The KPUD distribution line  
12 responsible for igniting the Mile Marker 28 Fire carried 7,200 volts.

13 12. Among the serious risks to person or property posed by KPUD’s  
14 activities in operating overhead power lines in Klickitat County is the risk of igniting  
15 an uncontrolled wildland fire. This substantial risk was or should have been known by  
16 KPUD.

17 13. A primary cause of wildland fires initiated by utility lines is direct or  
18 indirect contact between a tree and a power line. This was or should have should have  
19 been known by KPUD.

20 14. KPUD knew or should have known its overhead electrical lines posed a  
21 substantial likelihood of igniting a wildland fire that would result in significant  
22 property damage, fire suppression costs, and potential bodily injury or loss of life,  
23 should KPUD fail to properly monitor and maintain the vegetation along its power  
24 lines to prevent tree/power line contact.

25 15. KPUD knew or should have known that failure to properly monitor its  
26 overhead power lines for danger trees and branches in close proximity to its lines, and  
27 failure to promptly remove such trees or its branches would significantly increase the  
28 likelihood that KPUD’s electrical lines would cause a devastating wildfire.

1       16. The branches of the tree responsible for causing the Mile Marker 28 Fire  
2 were in close proximity to the distribution lines and should have been removed by  
3 KPUD prior to them causing the fire.

4       17. KPUD's failure to identify, prune, or remove the hazard tree that caused  
5 the fire was inconsistent with nationally recognized standards from the American  
6 National Standard Institute for vegetation management, and the National Electrical  
7 Safety Code national standard for the operation of distribution lines. RCW  
8 64.12.035(2) identifies a hazard to the general public health, safety, or welfare to exist  
9 when “[v]egetation has encroached upon electric facilities by overhanging or growing  
10 in such close proximity to overhead electric facilities that it constitutes an electrical  
11 hazard. . . .”

12       18. KPUD's vegetation management plan set forth in their Procedure  
13 Bulletin No. 51 states: “Any limb within ten feet of distribution electrical lines and  
14 twenty-three feet of transmission lines will be cut back.” One of the purposes of  
15 Procedure Bulletin No. 51 is to keep tree limbs safely away from distribution lines to  
16 prevent fires.

17       19. KPUD knew or should have known the consequences of failing to follow  
18 Procedure Bulletin No. 51 could lead to a devastating wildfire. In a January 21, 2011,  
19 mailing, KPUD warned its customers that “Trees & Electricity Don’t Mix.” The  
20 mailing went on to state “[w]hen trees touch, or come close to touching an overhead  
21 electric wire several things can happen . . . Or, a branch can merely brush against an  
22 energized wire and catch on fire.”

23       20. KPUD's director of operations and generations at the time of the fire,  
24 Ron Ihrig, expected KPUD's tree trimming crew to comply with the Procedure  
25 Bulletin No. 51.

26       21. KPUD's operation manager at the time of the MM 28 fire, Jeff Thayer,  
27 personally explained to KPUD's tree trimming crew the expectation that any tree limb

1 near a KPUD distribution line was required to be trimmed back to a distance of 10  
2 feet.

3       22. Aerial photos of the fire scene taken only a few weeks before the MM 28  
4 Fire shows the branches of trees growing into KPUD's electrical distribution line.  
5 Pursuant to KPUD's Procedure Bulletin No. 51 and the instructions, expectations, and  
6 directions of KPUD's management, those branches should have been trimmed back  
7 from KPUD's electrical distribution line in order to prevent a fire.

8       23. Washington State Department of Natural Resources conducted an  
9 investigation (DNR Investigation) of the Mile Marker 28 Fire the day after the fire  
10 started and produced a Wildland Fire Investigation Report (DNR Report).

11       24. DNR Wildland Fire Investigator, Dennis E. Heryford (Investigator  
12 Heryford), and a DNR Wildland Fire Investigator in Training, Shane Early  
13 (Investigator Early), went to the area where the fire started, examined the area, studied  
14 the physical evidence at the scene, interviewed a number of witnesses, and determined  
15 that the fire was caused by tree branches that contacted a KPUD power line.

16       25. There were no obvious signs of vegetation maintenance related to  
17 KPUD's distribution line at issue.

18       26. A subsequent review of the west boundary of KPUD's distribution line  
19 revealed several tree limbs that were within several inches of the westernmost  
20 conductor.

21       27. The DNR Report found the Mile Marker 28 Fire:

22       “...was caused by a line to ground fault that existed between a KCPUD  
23 pole with tag numbers on it (3923-8026.9 and 3923-7321.9) that is  
24 located south of the fire's specific origin and another KIPUD pole  
25 numbered 3923-9233.9 north of the fire's specific point or origin. This  
26 line to ground fault was created by the limbs of a standing live, green  
27 approximately 80 feet tall Grand Fir (tree 2) coming into contact with the  
KCPUD's westernmost distribution line. This interaction caused the  
effected limbs and needles on the limbs to ignite and burn within the tree.  
The burning debris fell to the ground, igniting the receptive fuels within

1 the host beds fuel beds in the fire's origin area consisting of lichens,  
2 grasses, brush, and forest debris."

3 28. The trunk of the approximately 80-foot-tall grand fir's branches  
4 that contacted the power line, resulting in the Mile Marker 28 Fire, was less  
5 than ten feet from the distribution line.

6 29. On August 6, 2014, after reviewing the DNR Report, the BIA  
7 Yakama Agency Superintendent issued a trespass notice pursuant to the  
8 regulations at 25 C.F.R. 163.29 to KPUD for damages caused by the MM 28  
9 Fire. KPUD did not respond to the notice of trespass.

10 30. On October 21, 2015, the BIA Yakama Agency Superintendent  
11 issued a demand notice to KPUD for \$65,500,066.78 in damages caused to the  
12 Yakama Indian Reservation as a result of the MM 28 Fire. The demand letter  
13 provided appeal rights pursuant to 25 C.F.R. Part 2.

14 31. On November 23, 2015, KPUD filed a Notice of Appeal/Objection  
15 to Demand in response to the Superintendent's October 21, 2015 demand  
16 notice.

17 32. On November 25, 2015, KPUD filed a complaint in federal court,  
18 *Public Utility District No. 1 of Klickitat County v. U.S. Department of the*  
19 *Interior, et. al.*, No. 1:15-cv-3201-RMP (E.D. Wash. Nov. 25, 2015), alleging  
20 that the Secretary exceeded his authority under the National Indian Forest  
21 Resources Management Act (NIRFMA) 25 U.S.C. § 3106, in enacting the  
22 trespass regulations at 25 C.F.R. 163 and that the federal government's actions  
23 in sending the demand letter to KPUD were *ultra vires*. KPUD also requested a  
24 permanent injunction against the Department of the Interior from enforcing the  
25 regulations at 25 C.F.R. Part 163 against KPUD.

26 33. On January 7, 2016, the BIA Northwest Regional Director sent a  
27 letter to KPUD providing 45 days to submit additional evidence or support for

1 their administrative appeal challenging the Superintendent's October 21, 2015,  
2 demand notice.

3 34. On February 1, 2016, the BIA and KPUD agreed to stay the  
4 administrative proceedings.

5 35. On November 23, 2016, the court granted the United States'  
6 Motion to Dismiss finding that the action being challenged "is not a final  
7 agency determination under 5 U.S.C. § 704" and as such, the court did not have  
8 jurisdiction to hear the appeal. *Public Utility District No. 1 of Klickitat County*  
9 *v. U.S. Department of the Interior, et. al.*, 2016 WL 10654671, at \*3 (E.D.  
10 Wash. Nov. 23, 2016).

11 36. On January 21, 2017, KPUD filed a notice of appeal to the Ninth  
12 Circuit of the district court's Order granting the United States motion to  
13 dismiss. KPUD eventually voluntarily withdrew its appeal to the Ninth Circuit.

14 37. On May 31, 2017, the BIA Northwest Regional Director sent a letter to  
15 KPUD explaining that he was lifting the stay of the administrative case and the  
16 Department was moving forward with the administrative appeal. Since the November  
17 23, 2015, Notice of Appeal/Objection to Demand stated that KPUD reserved the right  
18 to submit a statement of reasons pursuant to 25 C.F.R. § 2.10, the Regional Director  
19 requested that KPUD submit a statement of reasons and any pertinent information in  
20 support of its appeal to BIA within 30 calendar days. BIA approved KPUD's request  
21 for an extension of time to submit its Statement of Reasons. KPUD submitted a  
22 Statement of Reasons dated August 18, 2017. On February 22, 2019, BIA sent KPUD  
23 additional documents for review and comment. On March 27, 2019, KPUD submitted  
24 a Supplement to its Statement of Reasons.

25 38. On June 19, 2019, after a review of the record in the administrative  
26 appeal of the Superintendent's October 21, 2015, demand letter and additional  
27 materials submitted by KPUD, the BIA's Northwest Regional Director issued a  
28 decision on the appeal. The Regional Director upheld the Superintendent's  
COMPLAINT - 7

1 decision that KPUD committed a trespass by starting the MM 28 Fire and was  
2 liable in damages to the Yakama Nation for losses sustained in the fire. The  
3 Regional Director amended the amount of damages owed by reducing the  
4 interest rate of eight percent to one percent. The Regional Director also  
5 removed charges for investigative costs from the demand. These reductions in  
6 damages result in total demand of \$58,367,616.45.

7 39. The Regional Director's decision is appealable to the Interior  
8 Board of Indian Appeals (IBIA) pursuant to the regulations at 43 C.F.R. 4.310-  
9 4.340. KPUD must file a notice of appeal to the Board of Indian Appeals  
10 within 30 days from the date of receipt of the decision. KPUD appealed the  
11 Regional Director's decision to the IBIA on July 18, 2019.

12 40. 25 U.S.C. §§ 323-328, 25 C.F.R. Part 169, govern grants of rights-  
13 of-way over Indian lands. Grants of rights-of-way over Yakama Nation land  
14 require approval of the Secretary of the Interior, and the Yakama Nation. In  
15 1954, the BIA Acting Superintendent approved a right-of-way to P.U.D No. 1  
16 of Klickitat County for the construction and maintenance of a power line over  
17 Indian lands identified on a Right of Way Map dated February 3, 1954. The  
18 right-of-way was valid for 50 years and expired on February 2, 2004.

19 41. On January 22, 2007, the BIA Yakama Agency Superintendent  
20 sent a letter to KPUD noting that KPUD's easements had expired. On May 25,  
21 2007, the BIA Yakama Agency Superintendent again wrote to KPUD stating  
22 that the Agency had not received applications for the expired easements  
23 identified in the earlier correspondence.

24 42. On March 7, 2008, KPUD wrote to the BIA Yakama Agency  
25 stating that they intended to apply for renewal of the easements but took no  
26 further action to renew the easements. KPUD decided to continue to operate  
27 its transmission lines on the Yakama Reservation with clear knowledge that it  
28 had no authority to do so.

43. KPUD does not have a current right-of-way for its power lines on the Yakama Reservation and did not have a current right-of-way for its power lines at the time KPUD's lines caused the MM 28 Fire. KPUD continues to trespass and has been trespassing on Yakama Nation lands since February 2, 2004.

## **FIRST CLAIM FOR RELIEF**

## **(Negligence)**

44. The United States re-alleges and incorporates its previous allegations as though fully set forth herein.

45. KPUD owed the duty to exercise the “highest care that human prudence is equal to” in maintaining this distribution line free from trees and their branches. *See Brashears v. Puget Power & Light*, 100 Wn.2d 204, 211, 667 P.2d 78 (1983).

46. KPUD, through its own actions or inactions, or those of its agents or employees, failed to exercise due care and was negligent in the following particulars:

i. KPUD failed to exercise the standard of care required of an electric utility in maintaining its utility corridor in that it failed to adequately trim the branches or remove the tree that caused the MM 28 Fire. Such standard of care was required by KPUD's own policy and implementing procedure, accepted industry standards, the requirements of the American National Standards Institute's utility vegetation management standards, National Electric Safety Code standards, and other State standards.

ii. KPUD had a duty of care to maintain its power lines free from branches, such as the ones that caused this fire. The sequence of events leading to the start of the MM 28 Fire was the result of a failure on the part of KPUD to remove the branches or trees that posed an obvious and inevitable hazard to its power lines.

iii. KPUD negligently failed to fulfill its duties and failed to satisfy the level of care requisite to the operation, maintenance, and vegetation management of

high-voltage overhead electrical lines in wildland-fire-prone service areas; KPUD's failures were responsible for the start and spread of the MM 28 Fire.

47. The wrongful and negligent acts and omissions of KPUD were the direct and proximate cause of Plaintiff's loss of significant timber revenues that are a critical part of the Nation's economy, damages to the Nation's natural resources and Plaintiff's expenditures to suppress the MM 28 Fire and subsequent land rehabilitation.

## **SECOND CLAIM FOR RELIEF**

## (Fire Suppression Cost Recovery Under RCW 76.04.495)

48. The United States re-alleges and incorporates its previous allegations as though fully set forth herein.

49. RCW 76.04.495 allows the United States to recover reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs from any corporation whose negligence is responsible for starting a fire which spreads to forestland such as that at issue here.

50. As a direct and proximate result of KPUD's above-described negligence, the MM 28 Fire ignited, and the United States through Departments and firefighting agencies thereof, was obligated to fight and suppress the fire. As a result, the United States incurred necessary and reasonable fire suppression costs and expenses, and now will also incur litigation expenses.

### **THIRD CLAIM FOR RELIEF**

(Forest Trespass, 25 U.S.C. §§ 3103-3106, 25 C.F.R. § 163.29)

51. The United States re-alleges and incorporates its previous allegations as though fully set forth herein.

52. The Department of the Interior, through the Bureau of Indian Affairs, has assessed the civil penalties under NIFRMA administratively, which have been

appealed administratively by KPUD. That administrative appeal process is still ongoing.

53. Congress did not intend NIFRMA to pre-empt or supplant state law tort claims or remedies. NIFRMA does not allow recovery for suppression costs which are sought here.

54. Accordingly, the United States brings this claim protectively and upon exhaustion of the administrative process, the United States may amend this complaint.

## **FOURTH CLAIM FOR RELIEF**

## Trespass

55. The United States re-alleges and incorporates its previous allegations as though fully set forth herein.

56. KPUD is required to have a valid right-of-way for its transmission and power lines located on the Yakama Indian Reservation. KPUD does not have a valid right-of-way and has not had a valid right-of-way since 2004.

57. KPUD has not obtained a valid right-of-way and decided to continue to operate its electrical distribution lines in a manner that made it reasonably foreseeable that KPUD's decisions would disturb the Yakama Nation's possessory interest in land held in trust by the Plaintiff for the benefit of the Yakama Nation.

58. KPUD's trespass caused actual and substantial damage.

59. KPUD continues to operate its electrical distribution lines located on the Yakama Indian Reservation without a valid right-of-way.

**WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

1. All costs, to be determined at trial, associated with the suppression of the Mile Marker 28 Fire and rehabilitation of lands, whether expended or to be expended in the future.

2. Damages, to be determined at trial, related to the wrongful and negligent acts of KPUD, including but not limited to lost timber revenue and damages to the Nation's natural resources.

3. All present and future administrative costs, to be determined at trial, associated with the Mile Marker 28 Fire.

4. Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

5. Payment of costs and damages caused by the trespass of KPUD's transmission and power lines on Indian lands.

6. Interest as prescribed and allowable by law, including under 31 U.S.C. § 3717.

7. All costs, expenses, reasonable attorney's fees and any other relief the Court deems just and equitable.

Dated: July 23, 2019.

**WILLIAM D. HYSLOP**  
United States Attorney

s/William D. Hyslop  
William D. Hyslop

## United States Attorney

s/Joseph P. Derrig  
Joseph P. Derrig

## Assistant United States Attorney

Attorneys for Plaintiff

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys (*Firm Name, Address, and Telephone Number*) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (*If Known*) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (*Place an "X" in One Box Only*)

|  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i>          |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i> |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (*Place an "X" in One Box for Plaintiff and One Box for Defendant*)  
*(For Diversity Cases Only)*

|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (*Place an "X" in One Box Only*)

Click here for: [Nature of Suit Code Descriptions](#).

| CONTRACT   | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES  |
|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance   | <b>PERSONAL INJURY</b>   | <b>PERSONAL INJURY</b>   | <input type="checkbox"/> 422 Appeal 28 USC 158                              | <input type="checkbox"/> 375 False Claims Act   |
| <input type="checkbox"/> 120 Marine  | <input type="checkbox"/> 310 Airplane                              | <input type="checkbox"/> 365 Personal Injury - Product Liability                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157                          | <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))   |
| <input type="checkbox"/> 130 Miller Act  | <input type="checkbox"/> 315 Airplane Product Liability            | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability |   | <input type="checkbox"/> 400 State Reapportionment  |
| <input type="checkbox"/> 140 Negotiable Instrument                                   | <input type="checkbox"/> 320 Assault, Libel & Slander              | <input type="checkbox"/> 330 Federal Employers' Liability                                  |   | <input type="checkbox"/> 410 Antitrust  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment       | <input type="checkbox"/> 340 Marine                                | <input type="checkbox"/> 345 Marine Product Liability                                      |   | <input type="checkbox"/> 430 Banks and Banking  |
| <input type="checkbox"/> 151 Medicare Act  | <input type="checkbox"/> 350 Motor Vehicle                         | <b>PERSONAL PROPERTY</b>   |   | <input type="checkbox"/> 450 Commerce   |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) | <input type="checkbox"/> 355 Motor Vehicle Product Liability       | <input type="checkbox"/> 370 Other Fraud   | <input type="checkbox"/> 460 Deportation                                    |   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits           | <input type="checkbox"/> 360 Other Personal Injury                 | <input type="checkbox"/> 371 Truth in Lending  | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |   |
| <input type="checkbox"/> 160 Stockholders' Suits                                     | <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 380 Other Personal Property Damage                                | <input type="checkbox"/> 480 Consumer Credit                                |   |
| <input type="checkbox"/> 190 Other Contract  |  | <input type="checkbox"/> 385 Property Damage Product Liability                             | <input type="checkbox"/> 485 Telephone Consumer Protection Act              |   |
| <input type="checkbox"/> 195 Contract Product Liability                              |  |  | <input type="checkbox"/> 490 Cable/Sat TV                                   |   |
| <input type="checkbox"/> 196 Franchise   |  |  | <input type="checkbox"/> 850 Securities/Commodities/ Exchange               |   |
| REAL PROPERTY  | CIVIL RIGHTS   | PRISONER PETITIONS   | SOCIAL SECURITY   |   |
| <input type="checkbox"/> 210 Land Condemnation                                       | <input type="checkbox"/> 440 Other Civil Rights                    | <b>Habeas Corpus:</b>  | <input type="checkbox"/> 861 HIA (1395ff)                                   | <input type="checkbox"/> 890 Other Statutory Actions  |
| <input type="checkbox"/> 220 Foreclosure   | <input type="checkbox"/> 441 Voting                                | <input type="checkbox"/> 463 Alien Detainee  | <input type="checkbox"/> 862 Black Lung (923)                               | <input type="checkbox"/> 891 Agricultural Acts  |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                                  | <input type="checkbox"/> 442 Employment                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                                    | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                             | <input type="checkbox"/> 893 Environmental Matters  |
| <input type="checkbox"/> 240 Torts to Land   | <input type="checkbox"/> 443 Housing/ Accommodations               | <input type="checkbox"/> 530 General   | <input type="checkbox"/> 864 SSID Title XVI                                 | <input type="checkbox"/> 895 Freedom of Information Act                                       |
| <input type="checkbox"/> 245 Tort Product Liability                                  | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment     | <input type="checkbox"/> 535 Death Penalty   | <input type="checkbox"/> 865 RSI (405(g))                                   | <input type="checkbox"/> 896 Arbitration  |
| <input type="checkbox"/> 290 All Other Real Property                                 | <input type="checkbox"/> 446 Amer. w/Disabilities - Other          | <b>Other:</b>  |   | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
|  | <input type="checkbox"/> 448 Education                             | <input type="checkbox"/> 540 Mandamus & Other  |   | <input type="checkbox"/> 950 Constitutionality of State Statutes                              |
|  |  | <input type="checkbox"/> 550 Civil Rights  |   |   |
|  |  | <input type="checkbox"/> 555 Prison Condition  |   |   |
|  |  | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                    |   |   |
|  |  |  | FEDERAL TAX SUITS   |   |
|  |  |  | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)            |   |
|  |  |  | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609                    |   |
|  |  |  | IMMIGRATION   |   |
|  |  |  | <input type="checkbox"/> 462 Naturalization Application                     |   |
|  |  |  | <input type="checkbox"/> 465 Other Immigration Actions                      |   |

**V. ORIGIN** (*Place an "X" in One Box Only*)

|  |   |  |   |   |  |   |
|--|---|--|---|---|--|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District ( <i>specify</i> ) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|--|---|--|---|---|--|---|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*): \_\_\_\_\_

**VI. CAUSE OF ACTION**

Brief description of cause: \_\_\_\_\_

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**    Yes    No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): \_\_\_\_\_

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
  
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
  
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
  
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
  
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.